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7590 06/12/2006 Senniger Powers Leavitt & Roedel One Metropolitan Square 16th Floor Street St Louis, MO 63102			EXAMINER REICHLE, KARIN M	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/034,846
Filing Date: December 28, 2001
Appellant(s): DORSCHNER, LINDA M.

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Richard L. Bridge
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3-29-06 appealing from the Office action mailed 9-6-05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

GROUND OF REJECTION NOT ON REVIEW

The following grounds of rejection have not been withdrawn by the examiner, but they are not under review on appeal because they have not been presented for review in the appellant's brief:

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Claim 90 is rejected under 35 U.S.C. 103(a) as being unpatentable over The Procter & Gamble Company PCT '367, hereinafter referred to as Clear et al, in view of Kimberly-Clark Worldwide, Inc., PCT '913, hereinafter referred to as Morman et al.

Claim 93 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roe et al '673 in view of The Procter & Gamble Company, EP '714, hereinafter referred to as Divo et al.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

96/18367 (PCT)	THE PROCTER & GAMBLE COMPANY	06-1996
5,151, 092	BUELL et al	09-1992
5,904,673	ROE et al	05-1999
4,695,278	LAWSON	09-1987
00/38913 (PCT)	KIMBERLY-CLARK WORLDWIDE, INC.	07-2000
0 650 714 (EP)	THE PROCTER & GAMBLE COMPANY	05-1995

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Language Interpretation

Various claim terms have been defined on page 4, line 9-page 8, line 10. All other terminology will be given its common meaning, i.e. dictionary definition. For example, “adjacent” as defined by the dictionary means “close to, lying near”, i.e. is considered relative terminology. See especially page 6, lines 22-25 and 16-18, e.g. “bonded” includes both direct and indirect bonding, and page 5, last 5 lines, i.e. at a minimum “stretchable” means extendable, e.g. a gathered material is extendable, i.e. stretchable, to its ungathered length. With regard to claim 83, claim 107, lines 9-11, claim 108, claim 109, lines 7-8, and claim 110, it is noted that “being stretchable along substantially the entire...of the” “cover” or “liner” does not require that the cover or liner must be stretchable in that direction along the entire dimension, e.g. “being stretchable along the entire length of the cover” is interpreted to mean that the cover is “stretchable” in at least one or some direction at each point along a length which length runs the entirety of the cover, e.g. if the outer cover is gathered in some direction at each point along a length which length runs the entirety of the cover such would be considered to meet the claim language. Similar language with respect to the liner or width will be interpreted similarly.

Ground A:

Claims 83-89, 91-92, and 106-111 are rejected under 35 U.S.C. 102(b) as being anticipated by Clear et al, PCT '367.

Claims 106-111: See Figures 1 or 2, i.e. surface area of core 28 is less than or equal to “about” 50% of the surface area of the article, liner is 24, cover is 26. It is noted that the terminology “about” allows some leeway from the dimension it describes. With regard to the front edge being closer to the front end than the back edge is to the back end, see page 13, lines 12-15 and page 12, line 15-page 13, line 2, as well as the paragraph bridging pages 6-7. With regard to the “bond” language, see page 8, lines 15-17 and sentence bridging pages 9-10 as well as the Claim Language Interpretation section supra. With regard to the stretchability of the liner and cover along substantially the entire length and/or width thereof, or “adjacent” front and back edges of the core, see the Claim Language Interpretation section supra, elements 32, 34 and 38, the sentence bridging pages 12-13, page 13, line 17 and page 14, lines 14-15, and 25-33.

Claims 83-89 and 91-92: see page 3, line 5-page 4, line 5, page 7, lines 13-14, page 9, lines 4-28 (and thereby, by incorporation, Buell et al '092), page 10, lines 9-13, page 10, line 28-page 11, line 10, page 13, lines 3-23, page 15, line 13-page 17, line 16 (and thereby, by incorporation, Buell et al '092), and page 5, lines 20-23 as well as page 6, lines 6-18 and 22-25 and page 5, last 9 lines of the instant specification, i.e. the cover and liner are at least extensible and at most elastomeric, i.e. “but not necessarily elastomeric” infers “but not unnecessarily elastomeric”, i.e. could be elastomeric, in both the longitudinal direction, i.e. panel 38, and the transverse direction, i.e. waist panel 34. With regard to claims 84-89, lines 3 et seq thereof recite capability of the claimed structure. See the portions of Clear cited supra, i.e. Clear et al teaches a

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cover and liner capable of lateral elongation and substantially permanent elongation laterally.

Therefore, Clear et al includes all the claimed structure. Thus there is sufficient factual basis for one to conclude that the capabilities of such claimed structure would also be inherent in the same structure of Clear et al, see MPEP 2112.01

Ground B:

Claims 83-89, 91-92, 100-102 and 106-111 are rejected under 35 U.S.C. 102(b) as being anticipated by Roe et al '673.

Claims 83, 100-102 and 106-111, see Figures 1 and 3-4, col. 4, lines 43-50, col. 6, lines 20-26 and 29-35, col. 22, Table 1, Sample X, col. 22, lines 56 et seq, col. 23, lines 5-9, col. 25, lines 19-45, i.e. surface area of core 28 is less than or equal to "about" 50% of the surface area of the article, liner is 24, cover is 26. It is noted that the terminology "about" allows some leeway from the dimension it describes. With regard to the front edge being closer to the front end than the back edge is to the back end, see col. 4, lines 43-50 and Figures 1 and 3-4. The surface area of the portion of the core which extends into the front half of the article has a surface area which is less than about 30% of the surface area of the front half of the article, see again col. 23, lines 5-9. It is noted the article includes both the chassis 22 and the belt 32. With regard to the "bond" language, see col. 8, lines 57-59 and col. 9, lines 31-34 as well as the Claim Language Interpretation section supra. With regard to the stretchability of the liner and cover along substantially the entire length and/or width thereof, or "adjacent" front and back edges of the core, see the Claim Language Interpretation section supra, col. 4, lines 43-50, i.e. spaced but yet "adjacent", col. 10, lines 22-52 (and thereby, by incorporation, Lawson '278 at col. 8, lines 1-

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13), element 30, col. 11, lines 19-39, col. 25, lines 19-45 (and thereby, by incorporation, Buell '092), i.e. the waist belt can include the cover and liner of the chassis, the lateral edge in the first waist region as well as the entire side edges can be elasticized.

Claims 84-89 and 91-92: see the portions cited supra as well as Buell '092 incorporated thereby at col. 17, line 30-col. 18, line 27, col. 36, lines 10-35, col. 10, lines 8-37, col. 11, lines 9-51 (Note the discussion supra with regard to the language "but not necessarily elastomeric"), and col. 42, lines 1-11. With regard to claims 84-89, lines 3 et seq thereof recite capability of the claimed structure. See the portions of Roe and Buell cited supra, i.e. teaches a cover and liner capable of lateral elongation and substantially permanent elongation laterally. Therefore, Roe includes all the claimed structure. Thus there is sufficient factual basis for one to conclude that the capabilities of such claimed structure would also be inherent in the same structure of Roe et al, see MPEP 2112.01

GROUND OF REJECTION NOT ON REVIEW

The following grounds of rejection have not been withdrawn by the examiner, but they are not under review on appeal because they have not been presented for review in the appellant's brief:

Claim 90 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clear et al '367 in view of Morman et al, PCT '913.

See page 1, line 17 and page 9, lines 8-9 of Clear et al, i.e. desire for aesthetically pleasing fit and clothlike appearance. Appellant claims an outer cover of a necked laminate of certain materials which Clear et al does not teach. However see Morman '913 at the abstract,

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page 18, lines 3-15 and page 19, lines 12-14, i.e. necked laminate of claimed materials used in diaper to improve fit and clothlike appearance. To employ an outer cover including a necked laminate as taught by Morman, i.e. as claimed, on the Clear device would be obvious to one of ordinary skill in the art in view of the recognition that such would provide a more aesthetically pleasing fit and clothlike appearance and the desire of such by Clear et al.

Claim 93 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roe et al '673 in view of Divo et al, PCT '714.

Appellant claims an outer cover comprising spunbond polypropylene laminated with an SIS adhesive which Roe et al does not teach. However see portions of Roe et al cited supra (Appellant's attention is also invited to definition of "nonwoven" in Materials Handbook, i.e. includes spunbond polyolefins, i.e. polypropylene), i.e. outer cover of Roe et al includes spunbond polypropylene which is laminated to elastic by meltblown adhesive to form zero strain laminate to be ring rolled. See also Divo et al at col. 1, line col. 3, lines 29-55, col. 4, lines 35-56, col. 6, lines 31-39, col. 8, lines 6-33, col. 10, lines 8-15, i.e. SIS adhesive applied by a melt blown process is used to attach nonelastic nonwoven layer to elastic layer to form zero strain laminate to be ring rolled. To substitute the adhesive as taught by Divo et al for the adhesive of Roe et al would be obvious, see In re Siebentritt, 54 CCPA 1083, i.e. two equivalents are interchangeable for their desired function, express suggestion of desirability of substitution not needed to render such substitution obvious.

(10) Response to Argument

Ground A:

Claim 107:

Appellant's arguments on pages 10-15 of the Brief have been considered but such remarks are narrower than the claim language, the teachings of the prior art, and the prior art rejections. It is noted that the arguments are substantially those made in the 6-20-05 response. Specifically, with regard to the argument that Clear et al does not explicitly teach the claimed positions of the front and rear edges of the absorbent core and the front and rear ends of the article, respectively, attention is again invited to Figures 1-2 and page 13, lines 12-15 and page 12, line 15-page 13, line 2, as well as the paragraph bridging pages 6-7 of Clear et al which set forth that the containment assembly 22 comprises topsheet 24, back sheet 26 and absorbent core 28 and has end edges 62 from which the front and rear edges of the core are equally spaced (Note also page 9, lines 29-33), that fit panels 38 extend from the edges 62 of such containment assembly and that the fit panel 38 in the rear region 45 can be 1.5 to 2 times the longitudinal length of the fit panel in the front fit region 47 (i.e. the physical length of the rear panel is greater than that of the front panel) to create a desired greater elastic extensibility in the rear fit region (i.e. the greater elastic extensibility in the rear panel due to its longer length is 1.5 to 2 times the elastic extensibility in the shorter front panel), i.e. in an embodiment the distance of the edge 64 from the edge 62 in the rear is larger than that in front, and elastic waist feature 34 extends from edge 64 to the end of the article 52 (Note also col. 16, lines 19-29). It is noted that elastic waist feature may only extend from the rear panel 38. Therefore, the prior art to Clear teaches the

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Ground B:

Claim 107:

Appellant's arguments on pages 10-15 of the Brief have been considered but such remarks are narrower than the claim language, the teachings of the prior art, and the prior art rejections. It is noted that the arguments are substantially those made in the 6-20-05 response. Specifically, Appellant argues that the Roe et al reference does not teach 1) at least a portion of the absorbent core bonded to a stretchable outer cover and 2) the outer cover is stretchable along substantially the entire length of the outer cover. With regard to 1), attention is again invited to the Claim Language Interpretation section and thereby page 6, lines 22-25 and 16-18 of Appellant's own specification, i.e. the absorbent core at a minimum is required to be indirectly bonded to a stretchable cover. Attention is now directed again to col. 8, lines 57-59 and col. 9, lines 31-34 of Roe et al, i.e. the core is at least indirectly connected to the stretchable cover. See also discussion of 2) infra. With regard to 2), attention is again invited to the Claim Language Interpretation section supra, lines 5 et seq and thereby, page 5, last 5 lines of Appellant's own specification and the claim language of claim 107, i.e. the outer cover at a minimum is required to be capable of extension. Attention is now directed again to Roe et al at col. 10, lines 22-52, and thereby Lawson '278, col. 8, lines 1-13, Roe at element 30, col. 11, lines 19-39 and col. 25, lines 29-45, and thereby Buell '092. It is noted that the claim 107 does not require the outer cover have any specific construction, i.e. the claim does not require any specific number of layers and/or the composition thereof. However, attention is also directed to the instant application at pages 18-25. The instant application discloses the outer cover can include a "stretchable" laminate, i.e. more than one layer including "stretchable" and/or nonstretchable

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claimed positions of the edges to the ends. With regard to the Appellant's argument that since there is no express disclosure, the Examiner is making assumptions, i.e. the Examiner is relying on an inherency argument, as set forth supra it is the Examiner's position that the reference teaches the claimed features, i.e. does not argue inherency. The rejection sets forth that the prior art teaches the feature. Finally, as to the Appellant's argument that the Examiner asserts that the embodiments shown in Figures are irrelevant, such argument is narrower than the Examiner's position set forth in the FINAL, i.e. The FINAL set forth "any argument as to the prior art teaching other embodiments as well", e.g. on page 17, is irrelevant in the 102 rejection of this feature", not that the embodiments are irrelevant as now argued by Appellant.

Claims 109 and 111:

Since the arguments made with regard to these claims are the same as those set forth supra with regard to claim 107, the arguments are deemed not persuasive for the same reasons as those set forth supra with regard to claim 107. It is however noted that contrary to Appellant's remarks claim 110 depends from claim 108, not claim 109.

The rejection of claims 83-89, 91-92 and 106-11 under 35 USC 102 is deemed proper and maintained.

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materials. Roe et al, and thereby Lawson and Buell, teach laminates of materials, e.g. 26 and 30, making up an outer cover such that it is extensible or “stretchable” along substantially an entire length of the outer cover. Thus Appellant’s remarks are narrower than the claim language and the teachings of the prior art. It is noted however that Lawson at col. 8, lines 1-5 teaches a laminate of pleated fabric and stretchable film which appears to be one of the possible constructions of the outer cover disclosed by Appellant.

Claims 109 and 111:

Since the arguments made with regard to these claims are the same as those set forth supra with regard to claim 107, the arguments are deemed not persuasive for the same reasons as those set forth supra with regard to claim 107. It is however noted that contrary to Appellant’s remarks claim 110 depends from claim 108, not claim 109.

The rejection of claims 83-89, 91-92 and 106-11 under 35 USC 102 is deemed proper and maintained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

K. M. Reichle



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